

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JOHN ROE, et al., :

Plaintiffs, : Case No. 3:15-cv-111

-vs- : Judge Thomas M. Rose

AMAZON.COM, INC. et al. : Magistrate Judge _____

Defendants. :

**ANSWER TO COMPLAINT AND ADDITIONAL DEFENSES
OF AMAZON.COM, INC.**

Defendant Amazon.com, Inc. (“Amazon”) hereby answers the Complaint of John Roe, et al. (“Complaint”), as follows:

FIRST CLAIM

1. Pursuant to Rule 8(b)(5) of the Federal Rules of Civil Procedure, Amazon states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 1 of the Complaint.

2. Amazon admits that it sells goods over the Internet through its website and some of those goods are for delivery to residents of Ohio. Amazon admits to personal jurisdiction in this Court solely for purposes of this action. Pursuant to Rule 8(b)(5) of the Federal Rules of Civil Procedure, Amazon states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 2 of the Complaint that are directed to the other defendants. Amazon denies all remaining allegations of Paragraph 2 of the Complaint.

3. Amazon admits that it offered the book *A Gronking to Remember* for sale over the Internet through its website for delivery to residents of Ohio. Amazon admits that this book was

written and published by an author with the pen name Lacey Noonan. Amazon further admits that the book has and is being offered for sale in both digital (Kindle) format as well as in paperback. Pursuant to Rule 8(b)(5) of the Federal Rules of Civil Procedure, Amazon states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 3 of the Complaint that are directed to the other defendants. Amazon denies all remaining allegations of Paragraph 3 of the Complaint.

4. Amazon denies that it appropriated the Plaintiffs' photograph for commercial gain. Pursuant to Rule 8(b)(5) of the Federal Rules of Civil Procedure, Amazon states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 4 of the Complaint.

5. Amazon admits that *A Gronking to Remember* was shown on *Jimmy Kimmel Live*. Pursuant to Rule 8(b)(5) of the Federal Rules of Civil Procedure, Amazon states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 5 of the Complaint.

6. Amazon denies that it violated Chapter 2741 of the Ohio Revised Code or any other provision of law. Pursuant to Rule 8(b)(5) of the Federal Rules of Civil Procedure, Amazon states that it lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 6 of the Complaint.

7. Amazon denies all allegations of Paragraph 7 of the Complaint pertaining to Amazon. Pursuant to Rule 8(b)(5) of the Federal Rules of Civil Procedure, Amazon states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 7 of the Complaint as to the other defendants.

8. Amazon denies the allegations of Paragraph 8 of the Complaint pertaining to Amazon. Pursuant to Rule 8(b)(5) of the Federal Rules of Civil Procedure, Amazon states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 8 of the Complaint as to the other defendants.

9. Amazon denies the allegations of Paragraph 9 of the Complaint pertaining to Amazon. Pursuant to Rule 8(b)(5) of the Federal Rules of Civil Procedure, Amazon states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 9 of the Complaint as to the other defendants.

10. Amazon denies the allegations of Paragraph 10 of the Complaint pertaining to Amazon. Pursuant to Rule 8(b)(5) of the Federal Rules of Civil Procedure, Amazon states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 10 of the Complaint as to the other defendants.

11. Amazon denies the allegations of Paragraph 11 of the Complaint pertaining to Amazon. Pursuant to Rule 8(b)(5) of the Federal Rules of Civil Procedure, Amazon states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 11 of the Complaint as to the other defendants.

SECOND CLAIM

12. In response to Paragraph 12 of Plaintiffs' Complaint, Amazon incorporates by reference as if fully rewritten herein its responses in Paragraphs 1-11 of this Answer.

13. Amazon denies the allegations of Paragraph 13 of the Complaint pertaining to Amazon. Pursuant to Rule 8(b)(5) of the Federal Rules of Civil Procedure, Amazon states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 13 of the Complaint as to the other defendants.

14. Amazon denies that it acted with negligence and/or reckless disregard for the rights and dignity of the Plaintiffs—Amazon was not aware of the alleged unauthorized use. Pursuant to Rule 8(b)(5) of the Federal Rules of Civil Procedure, Amazon states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 14 of the Complaint as to the other defendants.

15. Amazon denies the allegations of Paragraph 15 of the Complaint pertaining to Amazon. Pursuant to Rule 8(b)(5) of the Federal Rules of Civil Procedure, Amazon states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 15 of the Complaint as to the other defendants.

THIRD CLAIM

16. In response to Paragraph 16 of Plaintiffs' Complaint, Amazon incorporates by reference as if fully rewritten herein its responses in Paragraphs 1-15 of this Answer.

17. Amazon denies the allegations of Paragraph 17 of the Complaint pertaining to Amazon. Pursuant to Rule 8(b)(5) of the Federal Rules of Civil Procedure, Amazon states that it lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 17 of the Complaint as to the other defendants.

18. Amazon denies any allegation in Plaintiffs' Complaint that is not specifically admitted herein.

ADDITIONAL DEFENSES

Further answering the Complaint, Amazon asserts the following additional defenses, without assuming the burden of proof when the burden of proof on any issue would otherwise rest with Plaintiffs. Amazon expressly reserves the right to amend its answer and defenses as additional information becomes available and/or is otherwise discovered.

FIRST ADDITIONAL DEFENSE
Failure to state a claim for relief

1. Plaintiffs' claims fail to state any claim for which relief may be granted.

SECOND ADDITIONAL DEFENSE
Section 230 of the Communications Decency Act

2. Plaintiffs' claims are barred as to Amazon by section 230 of the Communications Decency Act of 1996, 47 U.S.C. § 230, because they purport to hold Amazon, which is an interactive computer service, as the publisher or speaker of a purportedly infringing image, which was posted by users of the Amazon.com website.

THIRD ADDITIONAL DEFENSE
Innocence

3. Plaintiffs' claims and/or requested relief are barred, in whole or part, because the alleged misappropriation, if any, was innocent, as Amazon had no knowledge that the cover image was created without Plaintiffs' consent.

FOURTH ADDITIONAL DEFENSE
Waiver, acquiescence, laches, estoppel, accord and satisfaction

4. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver, acquiescence, laches, estoppel, and accord and satisfaction.

FIFTH ADDITIONAL DEFENSE
First Amendment

5. Plaintiffs' claims are barred by the protections of the First Amendment of the United States Constitution, including but not limited to the doctrine of incidental use.

SIXTH ADDITIONAL DEFENSE
Lack of damages

6. Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiff has suffered no damages.

SEVENTH ADDITIONAL DEFENSE
Assumption of the risk

7. Plaintiffs' claims are barred, in whole or in part, to the extent the alleged uses of the photographs at issue were authorized by persons or entities with the right to authorize such use.

EIGHTH ADDITIONAL DEFENSE
Superseding and intervening cause

8. To the extent Plaintiffs have suffered any injury for which the law would provide a remedy, which Amazon denies, any such injury was the direct and proximate result of acts or omissions by persons other than Amazon or those for whom it is responsible.

NINTH ADDITIONAL DEFENSE
Incidental use

9. This action is barred in whole or in part by the incidental use doctrine.

TENTH ADDITIONAL DEFENSE
Statutory exception

10. This action is barred in whole or in part by the exceptions provided in Ohio Revised Code Chapter 2741 governing the right of publicity incidental use doctrine, especially Sections 2741.02(e) and 2741.09.

PRAYER FOR RELIEF

WHEREFORE, Defendant Amazon.com, Inc. prays as follows:

1. That Plaintiffs take nothing by way of this Complaint and be denied the relief requested therein;
2. That the Complaint and each cause of action therein be dismissed with prejudice;
3. That the Court enter judgment for Defendant Amazon and against Plaintiffs on each cause of action set forth in the Complaint;
3. That Defendant Amazon be awarded reasonable attorneys' fees and costs of suit;

and

4. That the Court grant such other and further relief as it may deem just and proper.

Dated: April 24, 2015

Respectfully submitted,

/s/ John F Marsh

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2015, the foregoing document was filed electronically with the Clerk of Court using CM/ECF system, and notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system.

/s/ John F. Marsh
John F. Marsh (0065345)